IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

HOPE CANALES, Plaintiff/Appellant, v. VICTOR MENDEZ, ex rel. ARIZONA DEPARTMENT OF TRANSPORTATION, Defendant/Appellee.	2 CA-CV 2006-0232 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C-20062603

Honorable Deborah Bernini, Judge

AFFIRMED

Stephen Paul Barnard — Tucson
Attorney for Plaintiff/Appellant

Terry Goddard, Arizona Attorney General
By Leslie A. Coulson — Phoenix
Attorneys for Defendant/Appellee

H O W A R D, Presiding Judge.

¶1 After a hearing, an Arizona Department of Transportation (ADOT) administrative law judge (ALJ) found appellant Hope Canales had refused to take a requested blood alcohol test and suspended her driver's license for twelve months pursuant

to A.R.S. § 28-1321. The superior court affirmed the ALJ's decision. On appeal, Canales argues ADOT lacked jurisdiction or acted improperly in suspending her license because the administrative hearing was not held until thirteen months after her refusal to submit to a blood alcohol test. Because the one-year delay did not deprive ADOT of jurisdiction and Canales has not shown any actual prejudice from the delay, we affirm.

¶2 The facts relevant to this appeal are undisputed. Canales was arrested for driving under the influence of an intoxicant on March 18, 2005. After she refused to submit to a chemical test, her license was automatically suspended for one year pursuant to § 28-1321. Canales timely requested a hearing on the suspension, but ADOT did not hold a hearing until thirteen months after the request. After the hearing, the ALJ found the suspension proper and ordered it to take effect. Canales then appealed to superior court and obtained a stay of the suspension. The superior court found the suspension proper and affirmed the ALJ's decision. Canales now appeals that decision to this court.

¶3 Canales first argues ADOT lacked jurisdiction to conduct "a hearing regarding the order of suspension when it delayed the hearing date to almost thirteen months after the initial request was made." We are not bound by the superior court's judgment affirming an ALJ's decision because we review the same record. *Ritland v. Ariz. State Bd. of Med. Exam'rs*, 213 Ariz. 187, ¶ 7, 140 P.3d 970, 972 (App. 2006). We review an ALJ's interpretation of a statute de novo. *Forino v. Ariz. Dep't. of Transp.*, 191 Ariz. 77, 79, 952 P.2d 315, 317 (App. 1997). Section 28-1321(I) requires a hearing to be held within thirty days of ADOT's "receipt of a request for a hearing." In *Forino*, Division One of this court

held that the thirty-day requirement is directory and its violation does not deprive ADOT of jurisdiction absent "demonstrated prejudice."[1] 191 Ariz. at 81, 952 P.2d at 319.

¶4 Canales attempts to distinguish this case from *Forino*, arguing the delay in *Forino* was only 101 days whereas, here, the delay was over a year. Canales contends "[t]here must be some point . . . where ADOT's delay causes it to lose jurisdiction of the case" because, "[o]therwise, ADOT could simply delay the hearing until years after the arrest without any remedy offered to drivers." But in the nearly ten years since *Forino* was decided, the legislature has not changed the statute to modify the result in *Forino* nor has the supreme court overruled it, and we see no reason to depart from its holding now. Under that holding, ADOT retains jurisdiction even when the hearing is delayed, in the absence of prejudice to a licensee.

¶5 Canales also argues that allowing ADOT to delay a hearing "counters the legislative purpose of the Implied Consent Law." We agree with Canales that one purpose of § 28-1321 is "to assure prompt revocation of a dangerous driver's license." *Schade v. Dep't of Transp.*, 175 Ariz. 460, 462, 857 P.2d 1314, 1316 (App. 1993). But § 28-1321 was also enacted "to remove from Arizona highways those drivers who may be a menace to themselves and others because of intoxication . . . and to increase the certainty that an impaired driver is penalized even if he or she refuses to provide evidence of intoxication." 175 Ariz. at 462, 857 P.2d at 1316. Because only one of the statute's stated purposes was

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[1]In *Forino*, the court interpreted the predecessor to § 28-1321, A.R.S. § 28-691, which required that, "[u]pon the person's request the department shall afford him an opportunity for a hearing as early as practical within [sic] not to exceed thirty days after receipt of the request in the county wherein the licensee resides." *Forino*, 191 Ariz. at 79, 952 P.2d at 317, *quoting* A.R.S. § 28-446(B) (alteration in *Forino*) (emphasis omitted).

affected by the delay, Canales has not provided a sufficient reason for us to reconsider or limit this court's holding in *Forino*. Therefore we reject this argument.

¶6 Canales next argues that even assuming ADOT had jurisdiction to suspend her license, the ALJ acted improperly in doing so over a year after the arrest, relying on *Loughran v. Superior Court*, 145 Ariz. 56, 699 P.2d 1287 (1985), to support her argument. But Canales did not raise this argument or cite *Loughran* before the ALJ. "Generally, a failure to raise an issue before an administrative tribunal precludes judicial review of that issue unless it is jurisdictional." *Pavlik v. Chinle Unified Sch. Dist. No. 24*, 195 Ariz. 148, ¶ 8, 985 P.2d 633, 636 (App. 1999). Therefore, this argument is waived and we do not consider it further.

¶7 Canales next argues she was prejudiced by the delay. Canales claims she was prejudiced because "her ability to travel [was] severely limited, and [because of] the added hassle and delay of every day occur[re]nces." She also argues she "could have been finished with her suspension by the time she petitioned the . . . [s]uperior [c]ourt to review ADOT's decision." But she did not provide any evidence to the ALJ or the superior court, nor has she cited any evidence in this court supporting her contention that she was actually prejudiced or that she would be prejudiced by her delayed suspension. Thus, her claims of speculative, potential prejudice do not demonstrate prejudice. *See Forino*, 191 Ariz. at 81, 952 P.2d at 319. Additionally, Canales never brought any claimed prejudice to the ALJ's

attention by means of a motion to set the hearing or any other attempt to halt the delay and hasten a hearing. Therefore, she has not demonstrated any prejudice.[2]

¶8 Finally, Canales argues that "if no prejudice is found, a thirteen m[o]nth delay . . . causes a presumption of prejudice." To support this argument, Canales cites *Doggett v. United States*, 505 U.S. 647, 112 S. Ct. 2686 (1992), a criminal case that was based on a criminal defendant's Sixth Amendment right to a speedy trial. The constitutional issues relevant to the Supreme Court's decision in *Doggett* have no application here. Moreover, Canales's reliance on A.R.S. § 13-107(B)(2) is also misplaced because that statute requires criminal prosecutions to be commenced within certain periods of time after the state's discovery of the offense. In this case, the hearing at issue occurs in the administrative licensing context, rather than a criminal prosecution. Therefore, we decline to adopt a presumption of prejudice after a year.

¶9 For the foregoing reasons, we affirm the superior court's decision.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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GARYE L. VÁSQUEZ, Judge

[2]We also note that Canales has not argued she is ineligible to receive a nonoperating identification license under A.R.S. § 28-3165, which would alleviate many of the inconveniences she claims constitute prejudice. *See also* A.R.S. § 28-1321(J) (automatic stay).